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Security Council Committee established pursuant to resolution 1718 (2006) concerning the Democratic People's Republic of Korea

Note verbale dated 10 November 2006 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Australia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1718 (2006), and has the honour to submit to the Council a report pursuant to paragraph 11 of resolution 1718 (2006) on the steps taken by the Government of Australia to implement paragraph 8 of the above-mentioned resolution (see annex).

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Annex to the note verbale dated 10 November 2006 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

At 10 November 2006, the Government of Australia (hereafter "Australia") has taken the following steps to implement operative paragraph 8 of Security Council resolution 1718 (2006) (hereafter "the Resolution"):

I. General – Legislative Change

Australia has promulgated the *Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2006* ('the DPRK Regulations'), which took effect on 10 November 2006. The purpose of these regulations is to give effect to the Resolution. The DPRK Regulations have extraterritorial operation and apply to a person in Australia or a citizen of Australia who is outside Australia.

2. Australia has promulgated new, amending regulations under the *Customs (Prohibited Imports) Regulations 1959* and *Customs (Prohibited Exports) Regulations 1958* to give full effect to territorial aspects of trade restrictions (imports and exports to/from Australian territory). These amended regulations took effect on 3 November 2006. General controls on military and dual use items are contained in existing regulation 13 E of the *Customs (Prohibited Exports) Regulations* and, in respect of WMD-related goods, in the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*

II. Prohibition on Transfer to and Procurement from the DPRK of certain conventional military goods, nuclear-related, WMD-related and missile-related items and prohibition on export of luxury goods to the DPRK, and prohibition on transfers to or from the DPRK of technical training, advice, services or assistance relating to such items

3. OP 8 (a) and (b) of the Resolution require Australia to prevent the supply, sale or transfer to the DPRK or the procurement from the DPRK of certain conventional military goods, nuclear-related, WMD-related and missile-related items. The Security Council has subsequently adopted the following lists:

(i) S-2006-814: Nuclear-related items
(ii) S-2006-815: Missile-related items; and
(iii) S-2006-853: Chemical and Biological items

Further, OP 8 (a) (iii) of the Resolution requires Australia to prevent the supply of luxury items to the DPRK.

4. Further, OP 8 (c) of the Resolution requires Australia to prevent transfers to or from the DPRK of technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such conventional military goods and nuclear-related, WMD-related and missile-related items.

A. Exports/Imports from Australian Territory

Exports

5. Australia controls the export of military and specified dual-use technologies listed in the 'Defence and Strategic Goods List' (DSGL). Australia's export controls are enabled under the *Customs Act 1901* and executed through Regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*. Export controls under the *Customs (Prohibited Exports) Regulations 1958* cover a wide range of defence and related goods and technologies, nuclear related goods and goods and technologies with both civil and military applications. The controls also cover goods being exported after or for repair, and the temporary export of items for demonstration or loan purposes. The list of goods controlled forms the DSGL and includes equipment, assemblies and components, associated test, inspection and production equipment, materials, software and technology.

6. Australia also applies catch-all controls contained in the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*. This Act and its derived Regulations provide controls for goods, technologies and services not regulated by the Customs Act (ie. not listed in the DSGL). The WMD-related controls regulate the export and transfer, both within and outside Australian territory, of otherwise uncontrolled technologies but only if there is reasonable suspicion or belief that the export or transfer of these technologies may assist a WMD-related activity. The WMD Act's jurisdiction extends to the transfer of intangibles and transfers via intangible means (for example, electronic, photonic).

7. All relevant military and dual use items listed by the UN Security Council in its documents S-2006-814, S-2006-815, and S-2006-853 are included in the DSGL. The export of such items will be controlled under the *Customs (Prohibited Exports) Regulations 1958*.

8. Customs Regulation 13E prohibits the export of goods listed in the DSGL without the permission of the Minister for Defence or his delegate, while Regulation 13CO prohibits the export to the DPRK of embargoed items not listed in the DSGL without the permission of the Minister for Foreign Affairs. The Minister for Foreign Affairs has written to the Minister for Defence advising him of Australia's obligations under the Resolution and requesting that he exercise his powers under the *Customs (Prohibited Exports) Regulations 1958* accordingly.

9. Each export application is considered by relevant agencies on a case-by-case basis, taking into account the stated end-use and end-user. The processing of export applications, which are considered to be sensitive because of the stated end-use or end-user, includes a diversion risk assessment.

10. Items not controlled by Customs Regulation 13E will be included under the new Regulation 13CO of the *Customs (Prohibited Exports) Regulations 1958*. New Regulation 13CO prohibits the export from Australia to the DPRK of arms and related material, goods capable of being used in the development, production or stockpiling of nuclear, biological or chemical weapons, goods capable of being used in the development or production of missiles and goods included on the luxury goods list

determined by the Minister for Foreign Affairs of Australia. Such goods may only be exported with the permission of the Minister for Foreign Affairs of Australia.

11. More detailed information on Australia's export control regime, and a copy of the DSGL, is available on the Defence website: http://www.defence.gov.au/strategy/dtcc

Imports

12. The import of all embargoed items listed by the UN Security Council under the Resolution will be controlled under new regulation 4 Y of the *Customs (Prohibited Imports) Regulations 1956*. Regulation 4Y prohibits the import to Australia from the DPRK of arms and related material, goods capable of being used in the development, production and stockpiling of nuclear, biological or chemical weapons, and goods that are capable of being used in the development or production of missiles. Such goods may only be imported with the permission of the Minister for Foreign Affairs of Australia.

13. Regulations 8 and 11 of the DPRK Regulations (described in more detail in Part B below) also apply within Australian territory to give effect to the obligation in OP 8 (c) to prevent transfers to or from the DPRK of technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such conventional military goods and nuclear-related, WMD-related and missile-related items.

Customs Inspections

14. The *Customs Act 1901* gives the Australian Customs Service authority over all goods imported into and intended to be exported from Australia. The Act provides Customs with the power to inspect goods awaiting import or export which are held in the premises of freight forwarding companies but not yet subject to Customs' control. Goods on vessels and aircraft fall within Customs control and are subject to inspection at any time. The Act provides Customs with the power to board vessels within Australian waters and aircraft at Australian airports, and to search for and seize goods intended for importation or exportation. The Act also provides Customs with the authority to seize goods in transit through Australian waters, where a suspicion exists that the goods are connected, directly or indirectly, with the carrying out of a terrorist act, or the shipment is likely to prejudice Australia's defence or security or international peace and security.

15. Customs uses a range of technologies in the inspection processes which include x-ray container examination facilities, radiation detection devices, and chemical and explosives trained detector dogs.

Customs Outreach

16. The Australian Customs Service works in cooperation with other Australian government departments and agencies delivering outreach activities domestically and within our region. This includes engaging with local industries, and with international Customs administrations and regulatory authorities. Customs also offers a range of

Australian-based operational and intelligence-based training courses for international Customs officers.

B. Implementation of Prohibitions Through DPRK Regulations, Including Extraterritorial Operation of Prohibitions (Australian Nationals), and Use of Australian Aircraft and Vessels

17. The DPRK Regulations give extraterritorial effect to the embargo on conventional, nuclear-related, missile-related and WMD-related goods and luxury goods in respect of Australian nationals and supplement the Customs Act regime in relation to supplies, sales or transfer to the DPRK through Australian territory. The regulations also provide for the ban on military advice, assistance and training, and the use of Australian vessels and aircraft, as required by the Resolution.

18. The DPRK Regulations prohibit the supply or procurement of all items designated by the UN Security Council, including those contained in current control lists (S-2006-814, S-2006-815, and S-2006-853). Additional items determined by the Security Council as covered by OP 8 (a) (i) or (ii) of the resolution will automatically be incorporated into domestic legislation through the DPRK Regulations. The DPRK regulations use the term 'military goods' to refer to specified conventional weapons under OP 8 (a) (i) of the Resolution, and 'WMD-related goods' to refer to other items including nuclear-related, missile-related or WMD-related items specified by the Security Council under OP 8 (a) (ii) of the Resolution.

19. Regulation 19 of the DPRK Regulations allows the Minister for Foreign Affairs of Australia to determine by legislative instrument a list of goods that are to be treated as luxury goods for the purpose of these Regulations. The Australian Government is taking steps to develop a list of luxury goods for the purposes of the Resolution.

20. Regulation 7 of the DPRK Regulations prohibits conduct which results in the sale, supply or transfer of military goods, WMD-related goods or luxury goods to the Democratic People's Republic of Korea (DPRK). The prohibition extends to sale, supply or transfer to any recipient in the DPRK, any entity owned or controlled by the DPRK or any person or entity acting on behalf of or at the direction of the DPRK regime. Subregulations 7(2) and 7(3) provide a power for the Minister for Foreign Affairs to authorise the sale, supply or transfer of goods, having regard to Australia's international obligations, including to comply with the obligations of the Resolution. Regulation 7 (in conjunction with Regulation 12) implements OP 8 (a) of the Resolution.

21. Regulation 10 of the DPRK Regulations prohibits conduct that assists, or results in, the procurement of military goods or WMD-related goods from the DPRK, regardless of whether the goods originated in the DPRK. The prohibition extends to procurement from any person in the DPRK, any entity owned or controlled by the DPRK or any person or entity acting on behalf of or at the direction of the DPRK regime. Subregulations 10(3) and 10(4) provide a power for the Minister for Foreign Affairs to authorise the procurement of goods, having regard to Australia's international obligations, including to comply with the obligations of the Resolution. Regulation 10 (in conjunction with Regulation 13) implements OP 8 (b) of the Resolution.

22. Regulation 8 of the DPRK Regulations prohibits conduct that assists, or results in, the provision or transfer of technical training, advice, services or assistance relating to the provision, manufacture, maintenance or use of military goods or WMD-related goods to the DPRK. The prohibition extends to provision or transfer to any recipient in the DPRK, any entity owned or controlled by the DPRK or any person or entity acting on behalf of or at the direction of the DPRK regime. Subregulations 8(2) and 8(3) provide a power for the Minister for Foreign Affairs of Australia to authorise the provision of assistance, having regard to Australia's international obligations, including to comply with obligations of Resolution.

23. Regulation 11 of the DPRK Regulations prohibits conduct that assists, or results in, the procurement or transfer of technical training, advice, services or assistance relating to the provision, manufacture, maintenance or use of military goods or WMD-related goods from the DPRK. The prohibition extends to procurement from any recipient or citizen of the DPRK, any entity owned or controlled by the DPRK or any person or entity acting on behalf of or at the direction of the DPRK regime. Subregulations 11(2) and 11(3) provide a power for the Minister for Foreign Affairs of Australia to authorise the procurement of technical training or assistance, having regard to Australia's international obligations, including to comply with the obligations of the Resolution.

24. Regulations 8 and 11 implement OP 8 (c) of the Resolution.

Australian Aircraft and Vessels

25. Regulation 12 of the DPRK Regulations provides that the owner, pilot in command or operator of an Australian aircraft or the owner, master or operator of an Australian ship must not allow the aircraft or ship to be used in a way that assists, or results in, the sale, supply or transfer of military goods, WMD-related goods or luxury goods to the DPRK. The prohibition extends to sale, supply or transfer to any recipient in the DPRK, any entity owned or controlled by the DPRK or any person or entity acting on behalf of or at the direction of the DPRK regime. Subregulations 12(3) and 12(4) provide a power for the Minister for Foreign Affairs of Australia to authorise the use of an aircraft or ship to supply such goods, having regard to Australia's international obligations, including to comply with the obligations of the Resolution. Regulation 12 (in conjunction with Regulation 7) implements OP 8 (a) of the Resolution.

26. Regulation 13 of the DPRK Regulations provides that the owner, pilot in command or operator of an Australian aircraft or the owner, master or operator of an Australian ship must not allow the aircraft or ship to be used in a way that assists, or results in, the procurement of military goods or WMD-related goods from the DPRK, regardless of whether the goods originated in the DPRK. The prohibition extends to procurement from any person in the DPRK, any entity owned or controlled by the DPRK or any person or entity acting on behalf of or at the direction of the DPRK regime. Subregulations 13(4) and (5) provide a power for the Minister for Foreign Affairs to authorise the use of aircraft and ships to procure embargoed goods having regard to Australia's international obligations, including to comply with the

obligations of the Resolution. Regulation 13 (in conjunction with Regulation 10) implements OP 8 (b) of the Resolution.

27. The Australian Department of Transport and Regional Services will publish a Marine Notice and a Notice to Airmen to advise operators of the requirements of the regulations. These measures will clearly inform Australian-flagged vessels and aircraft of their obligations under the Resolution and help ensure that the sanctions contained within the Resolution are fully observed.

III. Financial Sanctions: Measures taken in accordance with operative paragraph 8(d) of the Resolution

28. Australia has implemented the obligation in OP 8 (d) of the Resolution to freeze the assets of listed individuals and/or entities (referred to collectively as 'persons'), and to prohibit the making of financial assets available to such persons, through the DPRK Regulations. From the moment a person is listed by the committee established by OP 12 of the Resolution ('Sanctions Committee'), an obligation to freeze the assets of that individual or entity, and to avoid making assets available to that individual or entity, is automatically activated under Australian law.

29. Regulation 14 of the DPRK Regulations provides that a person commits an offence if the person holds a freezable asset or uses or deals in freezable assets (including allowing or facilitating such use or dealing). Freezable assets are those assets owned or controlled, directly or indirectly, in Australia by persons designated by the Security Council or the Sanctions Committee.

30. Regulation 15 of the DPRK Regulations provides that a person commits an offence if the person, directly or indirectly, makes an asset available to a person designated by the Security Council or the Sanctions Committee.

31. Regulation 16 of the DPRK Regulations provides that the Minister for Foreign Affairs can authorise prohibited dealings under regulation 14 or 15. The Minister can exercise this power to allow for dealings which have been approved by the Sanctions Committee as humanitarian exemptions under OP 9 of the Resolution.

32. While it is the responsibility of banks and other financial institutions to ensure they comply with any requirements to freeze the assets of their clients, the Australian Government will facilitate compliance with the legislation and assist the financial sector in a number of ways. The Department of Foreign Affairs and Trade (DFAT) will publish a list of persons that have been designated by the Security Council under the Resolution, including in electronic form available to the public on the internet. DFAT will incorporate designated persons on a centralised 'UN Security Council Sanctions' email service through which DFAT will alert financial institutions and other asset holders of any updates to the list. Asset holders will be able to subscribe to this service. DFAT will also provide asset holders with list matching software ("LinkMatchLite") that financial institutions can use to cross-check their databases with the Security Council sanctions list.

33. In addition, the Australian Transaction Reports and Analysis Centre (AUSTRAC) will consider issuing an information circular to its reporting entities (e.g. financial

institutions) with reference to DFAT's notification on SCR 1718. The circular would also remind reporting entities of their obligations under section 16 of the Financial Transaction Reports Act 1988 concerning the reporting of suspect transactions.

IV. Travel Sanctions: Measures taken in accordance with operative paragraph 8(e) of the Resolution

34. Australia has a universal visa system requiring all visitors to Australia to obtain a visa before travel. These visas are processed offshore before the commencement of travel.

35. All individuals designated by the Security Council or the Sanctions Committee under OP 8 (e) of the Resolution will be placed on the Department of Immigration and Multicultural Affairs' (DIMA) Movement Alert List (MAL). The MAL is electronically accessible by DIMA officers posted to Australia's diplomatic and consular missions worldwide. A complete MAL update is sent electronically at least daily to Australia's overseas missions. A check is conducted against MAL prior to any decision to grant a visa at Australia, and again prior to a traveller's arrival in Australia. Additional checks are also undertaken at Australian entry points to ensure that any person listed on MAL subsequent to a visa grant is identified. Note that in order to list names on MAL, they must meet minimum data requirements (that is, full name and at least year of birth).

36. Where an individual is listed on MAL further enquiries must be made before a visa can be issued. In the event that an individual has been listed by the Security Council as subject to a travel ban under OP 8 (e) of the Resolution, then a visa for travel will be refused under relevant migration legislation.

37. Under existing Australian legislation (Regulation 2.43(1)(a)(i)(A) and Public Interest Criterion 4003(a) of the Migration Regulations 1994, the Minister for Foreign Affairs of Australia may determine that a visa should be refused or an existing visa cancelled, if the applicant or visa-holder's presence in Australia would be contrary to Australia's foreign policy interests (this power does not apply to protection (refugee) or humanitarian visas). The Minister for Foreign Affairs will make such a determination in respect of persons designated by the Security Council or the Sanctions Committee. Such persons shall not be permitted to enter into, or transit through, Australian territory, unless their travel has been approved by the Security Council as provided for under OP 10 of the Resolution. In the event that a non-citizen who is designated by the Security Council or the Committee is found to hold a temporary visa, the Minister for Foreign Affairs will make a determination in respect of that person and their visa will be cancelled.

V. Measures taken in accordance with operative paragraph 8(f) of the Resolution

38. Paragraphs 14 to 16 describe Australian action on cargo inspections within its territorial jurisdiction.

39. Australia is seeking ways to work collaboratively with other states to ensure that the Resolution's obligations are implemented comprehensively and effectively.